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IN THE COURT OF APPEALS OF INDIANA

DAVID F. RAY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 02A03-0611-CV-553
	)	
ANGELITA (RAY) RIDENOUR,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Thomas P. Boyer, Magistrate
The Honorable Charles F. Pratt, Judge
Cause No. 02D07-9111-DR-635

April 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

David F. Ray appeals the grant of Angelita (Ray) Ridenour's petition to cite Ray for contempt because he was delinquent in paying child support and in paying amounts previously ordered for medical expenses and attorney fees. Ray asserts the contempt findings are clearly erroneous because the court should have applied his payments to his delinquent support balance, rather than to the interest due thereon, and because the court failed to consider Ray's inability to pay the medical expenses and attorney fees as ordered. We affirm.

FACTS AND PROCEDURAL HISTORY

The marriage between Ray and Ridenour produced two children. Their divorce was final on May 15, 1995. Ridenour was given custody of the two children, and Ray was ordered to pay child support of $151.00 per week.

During 2003 and 2004, the parties filed a number of petitions, including two petitions by Ridenour to cite Ray with contempt, a petition by Ray to modify child support, a petition by Ray to terminate arrearage payments, a motion by Ridenour to compel discovery, and a request by both parties that the court determine Ray's arrearages and obligations. On February 23, 2005, the court declined to modify Ray's child support obligation because he was voluntarily unemployed, and ordered him to make the following payments:

> 12. Respondent is ordered to pay Petitioner the sum of Three Thousand Three Hundred Eighty Seven Dollars ($3,387.00), within ninety (90) days from the date of this order, as partial reimbursement for attorney fees incurred by Petitioner in this matter.
>
> * * * * *
>
> 14. Respondent shall pay the sum of One Hundred Fifty One Dollars ($151.00) per week to the Clerk of Allen County, each and every week, as

support for the parties' minor children.

15. Respondent shall pay the additional sum of One Hundred Dollars ($100.00) per week to the Clerk of Allen County, each and every week, to be applied to the following support related arrearages and obligations:

15.1 Respondent's child support arrearage in the amount of Two Thousand Four Hundred Twelve Dollars ($2,412.00) as of October 31, 2004.

15.2 Interest on Respondent's prior child support arrearage in the amount of Nine Thousand Eight Hundred Ninety One Dollars and Fifty Eight[-]Cents ($9,891.58) as of October 31, 2004.

15.3 Interest on Respondent's new child support arrearage, pursuant to I.C. 21-4.6.[sic]-1-101, in the amount of Two Thousand Four Hundred Twelve Dollars ($2,412.00) as of October 31, 2004.

16. Respondent is ordered to pay Petitioner the sum of Two Thousand Two Hundred Six Dollars and Thirty[-]Six Cents ($2,206.36) within one hundred twenty (120) days from the date of this order as reimbursement for his share of uninsured health care expenses which were incurred on behalf of the parties' minor children for the calendar years 2001, 2003, and 2004 (through August 10, 2004).

(Appellant's App. at 19-20.)

On July 27, 2005, Ridenour filed a petition requesting the court cite Ray for contempt because he had failed to make payments as required by the order of February 23, 2005. The court held a hearing on January 31, 2006, and then entered an order granting Ridenour's petition on July 13, 2006. In pertinent part, the order provided:

2. As of January 19, 2006, Respondent's total child support obligation, without credits for payments made by Respondent between October 31, 2004 and January 19, 2006, was $22,041.70, which is allocated as follows:

2.1 Respondent's weekly child support arrearage as of October 31, 2004 in the sum of $2,412.00;

2.2 Accrued interest on Respondent's weekly child support arrearage as of October 31, 2004, in the sum of $9,891.58;

2.3 Accrued interest on Respondent's weekly child support arrearage between October 31, 2004 and January 19, 2006, in the sum of $225.12 (16.08 X 14 months);

2.4 Respondent's weekly child support obligation during the time period between October 31, 2004 and January 19, 2006, in the sum of $9,513.00 ($151.00 X 63 weeks).

3. Respondent has paid a total of Thirteen Thousand Fifty Four Dollars ($13,054.00) to the Clerk of Allen County between October 31, 2004 and January 19, 2006, which is credited towards Respondent's total child support obligation as follows:

3.1 The sum of $9,513.00 towards Respondent's weekly child support obligation during the time period between October 31, 2004 and January 19, 2006, which is paid in full.

3.2 The sum of $3,541.00 towards the interest that had accrued as of October 31, 2004 on Respondent's child support obligation resulting in a balance of $6,350.58 as of January 19, 2006.

4. Respondent is found to be in contempt for his willful failure to comply with Paragraphs 14 and 15 from the Court's order of February 23, 2005.

5. On February 23, 2005, the Court entered the following order regarding payment of uninsured health care expenses for the parties' minor children:

[paragraph 16 as quoted above].

6. Respondent has failed to make any payments to Petitioner in regards to the aforesaid order regarding uninsured health care expenses for the parties' minor children.

7. Respondent is found to be in contempt for his willful failure to comply with Paragraph 16 from the Court's order of February 23, 2005.

8. Respondent owes Petitioner the sum of $203.00 as reimbursement for uninsured health care expenses incurred on behalf of the parties' minor children between August 10, 2004 and December 31, 2004.

9. At Paragraph 12 of the Court's order of February 23, 2005, Respondent was ordered to pay Petitioner the sum of $3,387.00, within 90 days, as partial reimbursement for attorney fees incurred by Petitioner in this matter. Respondent has failed to make any payments to Petitioner in accordance with Paragraph 12 from the Court's order of February 23, 2005.

10. The following is a summary of Respondent's child support arrearage, including statutory interest on the arrearage:

10.1 Respondent is in arrears in the payment of weekly support in the amount of $2,412.00 as of January 19, 2006.

10.2 Respondent's child support arrearage of $2,412.00 is accruing interest at the rate of $16.08 per month, which is to be calculated on the last day of the month.

10.3 Respondent's child support arrearage has accrued interest in the sum of $6,575.70 ($6,350.58 + 225.12), as of January 19, 2006.

10.4 All child support payments which are in excess of Respondent's child support obligation of $151.00 per week shall first be applied to accrued interest, and when the interest is paid in full to the arrearage of $2,412.00 as of January 19, 2006.

(*Id.* at 22-23.)

DISCUSSION AND DECISION

Where, as here, the trial court entered findings and conclusions to support its judgment, our review has two stages. *Dedek v. Dedek*, 851 N.E.2d 1048, 1050 (Ind. Ct. App. 2006). First, we evaluate the findings to determine whether they are supported by any evidence in the record; then we determine whether the findings support the judgment. *Id.* As we conduct our review, we consider only the evidence and reasonable inferences therefrom most favorable to the judgment, and we may neither reweigh the evidence nor reassess the credibility of the witnesses. *Id.*

Courts have inherent power to maintain their dignity, secure obedience with process and rules, rebuke interference with the conduct of business, and punish unseemly behavior. *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005) (emphasis removed). Disobedience that undermines the court's authority, justice, and dignity is an act in contempt of court. *Id.* "[I]ndirect contempt is the willful disobedience of any lawfully entered court order of which the offender has notice." *Id. See also* Ind. Code 34-47-3-1.[1]

To be held in contempt for failing to follow a court order, a party must willfully disobey the court's order. *Id.* at 170. The determination whether a party willfully

[1] Ind. Code 34-47-3-1 provides:

> A person who is guilty of any willful disobedience of any process, or any order lawfully issued:
> (1) by any court of record, or by the proper officer of the court;
> (2) under the authority of law, or the direction of the court; and
> (3) after the process or order has been served upon the person;
> is guilty of an indirect contempt of the court that issued the process or order.

That statutory definition is "merely a legislative recognition of our courts' inherent power to cite and punish for contempt." *Major*, 822 N.E.2d at 169.

disobeyed an order is left to the sound discretion of the trial court. *Id.* at 171. Unless the judgment is against the logic and effect of the facts and circumstances, and the reasonable inferences therefrom, the finding of contempt was within the court's discretion. *Clark v. Clark*, 404 N.E.2d 23, 47 (Ind. Ct. App. 1980). We will not reweigh the evidence or assess the credibility of the witnesses, and we view the evidence in the light most favorable to the judgment. *Id.*

1. Child Support Arrearage

Ray asserts the court erroneously found him in contempt for failing to eliminate his child support arrearage, because if the court had appropriately allocated the payments he made, his child support arrearage would have been gone. We cannot agree.

Ray supports his argument by quoting section 15 of the court's order of February 23, 2005:

> 15. Respondent shall pay the additional sum of One Hundred Dollars ($100.00) per week to the Clerk of Allen County, each and every week, to be applied to the following support related arrearages and obligations:
>
> 15.1 Respondent's child support arrearage in the amount of Two Thousand Four Hundred Twelve Dollars ($2,412.00) as of October 31, 2004.
>
> 15.2 Interest on Respondent's prior child support arrearage in the amount of Nine Thousand Eight Hundred Ninety One Dollars and Fifty Eight[-]Cents ($9,891.58) as of October 31, 2004.
>
> 15.3 Interest on Respondent's new child support arrearage, pursuant to I.C. 21-4.6.[sic]-1-101, in the amount of Two Thousand Four Hundred Twelve Dollars ($2,412.00) as of October 31, 2004.

Ray believes any money he paid in addition to his weekly support obligation should have applied to his arrearage and the interest due thereon in the order they are listed in those subparagraphs. Thereby, the $3,541.00 he paid would have eliminated the $2,412.00

arrearage, and the court would not have been able to find him in contempt.

First, Paragraph 15 and its subparagraphs do not indicate, as Ray asserts, that any payments he made in excess of his weekly obligation would be applied to his arrearage in the order of the subparagraphs. That language in the court's February 23, 2005 order simply sets out the amounts he owes, without indicating in what order they would be reduced by his payments.

Second, as Ridenour explains, the law in Indiana regarding payments on interest-bearing obligations is that "payments shall be applied first to interest, and then, if any balance remains, to reduction of principal." *Ind Dept. of State Revenue, Inheritance Tax Div. v. Estate of Rogers*, 459 N.E.2d 69, 71 (Ind. Ct. App. 1984). This rule applies unless there is an agreement or statute to the contrary. *Id.* As Ray did not file a reply brief, he has not availed himself of the opportunity to point us to such an agreement or statute. Therefore, we presume none exists, and the general rule should apply.

Accordingly, we find no abuse of discretion in the trial court's determination of how to apply Ray's payments to his child support arrearage and the interest due on that arrearage.

2. Medical Expenses & Attorney Fees

Ray claims the court abused its discretion when it found him in contempt for failing to pay the medical expenses and attorney fees as ordered on February 23, 2005. He asserts he was "unable," not "unwilling," to pay. We find no abuse of discretion.

Ray claims he "simply did not have the money to pay all of the obligations ordered by the Court." (Appellant's Br. at 10). He notes his testimony that he was

behind in paying many of his other household obligations, that his wife had to take early maternity leave, and that he had just started a new job.

However, the court was not required to assign credibility to Ray's testimony regarding his financial situation, as Ray failed to bring tax returns or account statements to support his testimony. Neither was the court required to ignore that Ray essentially had remained voluntarily unemployed for nine months after the court's February 23, 2005 order required him to begin making the payments at issue.[2] During questioning by his attorney, he agreed that he stayed home with his children because "given [his] wife's income that was something [he] could do." (Appellant's App. at 87.) However, if Ray was unable to make the court-ordered payments based on only his wife's income, then his decision to remain unemployed during 2005 was a willful decision to remain unable to comply with the court's order. Therefore, we cannot find the court abused its discretion in finding Ray willfully violated the court's order by failing to obtain employment that would have allowed him to make the required payments.

Affirmed.

SHARPNACK, J., and BAILEY, J., concur.

[2] Ray had worked every other weekend during the summer months of 2005 at Lake James Family Resort, and in December of 2005 he began working full-time at Michigan Sugar Company. Otherwise, he remained unemployed during 2005.